COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Bell Atlantic-Massachusetts Tariff No. 17)

Unbundled Subloop Arrangement) D.T.E. 98-57

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COMMENTS OF RHYTHMS LINKS INC.

Introduction
Pursuant to the Hearing Officer's June 14, 2000 order, Rhythms Links Inc. ("Rhythms") herein files comments in response to Bell Atlantic - Massachusetts' ("BAMA's" or "Bell Atlantic's") May 25, 2000 Tariff No. 17 filing ("May 25th Tariff Filing"). BAMA filed this tariff in response to, among other things, the Federal Communications Commission's ("FCC's") requirement that ILECs make unbundled subloops available to CLECs as network elements. Notwithstanding BAMA's assertions, BAMA's unbundled subloop offering is inconsistent with both the letter and spirit of BAMA's obligations under the UNE Remand Order and should therefore be further suspended pending a thorough investigation.

It is important to note that the availability of subloops is directly linked to the ability of CLECs to provide advanced services over loops served by fiber. For this reason, the May 25th Tariff Filing is intimately tied to BAMA's collocation at the remote terminal offering. Given the intimate and interdependent nature of these issues, Rhythms urges the Department to initiate an investigation into BAMA's tariffed offering of the subloop network elements as well as collocation at remote terminals in one consolidated proceeding.

BAMA's May 25th Tariff Filing also includes BAMA's dark fiber offering. BAMA's tariff appears to be internally inconsistent on whether spliced dark fiber is available to CLECs. Therefore, Rhythms requests that the Department require BAMA to clarify that spliced dark fiber will be made available to CLECs.

Bell Atlantic's Unbundled Subloop Offering is Overly-Restrictive
Bell Atlantic's Narrow Definition of the Unbundled Subloop is Inconsistent with the UNE Remand Order's Mandate that ILECs Apply an Expansive Interpretation of this Element
In the UNE Remand Order, the FCC broadly defined subloops, as "any portion of the loop that is technically feasible to access at terminals in the incumbent LEC's outside plant." The FCC intentionally applied a "broad definition of the subloop [to allow] requesting carriers maximum flexibility to interconnect their own facilities

[at technically feasible points to] best promote the goals of the Act." Any limitation of the subloop to a particular portion of the loop would be at odds with this stated purpose. As the FCC explained, access to "portions of the loop element at these points, i.e., access to the subloop, will facilitate rapid development of competition, encourage facilities-based competition and promote the deployment of advanced services." The FCC's use of the plural leaves no room for doubt.

The FCC also established an expansive interpretation of the terminals from which CLECs are entitled to access the subloop. Accessible terminals include, but are not limited to, a technically feasible point near the end user's premises: "Such points may include, but are not limited to, the pole or pedestal, the network interface device ["NID"], the minimum point of entry ["MPOI"], the single point of interconnection ["SPOI"], the main distribution frame ["MDF"], the remote terminal ["RT"], and the feed/distribution interface ["FDI"]." As further emphasis of the expansive nature of this network element, the UNE Remand Order gives BAMA the burden of demonstrating that unbundling is not technically feasible or space is not available at each of those locations.

In stark contrast to the FCC's clear rules, BAMA has tariffed an overly restrictive definition of the subloop in Massachusetts. BAMA's offering unilaterally limits the subloop UNE to only the "metallic distribution pairs/facilities" at the BAMA FDI. This is an impermissible narrowing of the FCC 's mandate. There is nothing in the UNE Remand Order that limits the subloop to the copper distribution portion of the loop. Moreover, BAMA's qualification that subloops include only those pairs "at the BAMA FDI" is at odds with the FCC's specific findings that CLECs may access subloop at any number of technically feasible points, including NIDs, MDFs, MPOIs, RTs, SPOIs and FDIs. Thus, BAMA's subloop definition is inconsistent with the UNE Remand Order's clear definition of the subloop and should be revised.

Not only does BAMA's restricted subloop definition stand in stark contrast to the "broad interpretation" applied to subloops, it is contrary to the underlying purpose of making the subloop available. BAMA's tariff is completely at odds with the explicit reasoning, previously noted, that a broad interpretation of the subloop is necessary to allow CLECs flexibility in interconnection to promote the provision of, among other things, advanced services. When a particular end user's loop is served by fiber feeder, an expanding group as BAMA continues to deploy fiber facilities, DSL providers like Rhythms must have access to the copper portion of the loop in order to offer DSL services to those end users. Specifically, DSL providers must be able to place a Digital Subscriber Line Access Multiplexer ("DSLAM") at the RT on the copper end of the loop. This can be done, for example, by installing a CLEC-owned line card, integrating both DSLAM and splitter functionalities, in the ILEC's digital loop carrier ("DLC") chassis in the RT. The DSL traffic can then be transmitted over fiber transmission facilities, including the fiber feeder portion of the loop, back to the central office or a CLEC-owned facility. Thus, CLECs must be allowed access to the feeder portions of the loop as subloop elements in order to provide end users with DSL services as envisioned by the FCC.

By restricting subloops to the metallic distribution portion of the loop, BAMA has effectively foreclosed the provisioning of advanced services to Massachusetts consumers. While CLECs can access the copper distribution, BAMA has written its subloop offering to deny CLECs access to the necessary portions of the feeder between the FDI and the central office. Without access to these subloop elements CLECs will not be able to provide competitive advanced services to end users served by fiber. This effect is contrary to the purpose of making a broadly defined subloop available, which is the widespread provisioning of advanced services and the nurturing of a competitive advanced services marketplace.

Bell Atlantic's Requirement that CLECs Requesting Access to the Subloop Must Construct and Provide a Separate Interconnection Facility is Unreasonable
BAMA's May 25th Tariff Filing requires CLECs to construct and provide a separate interconnection facility before accessing any subloop element. According to the tariff, "the unbundled subloop provides a transmission channel between the CLEC's Outside Plant Interconnection Cabinet (TOPIC) and the rate demarcation point at the

end user location." A TOPIC is a separate interconnection facility that BAMA requires CLECs to "provide and install [within] 100 feet of the FDI on an easement or right of way" obtained by the CLEC. Only after the TOPIC is built and interconnection is completed may the CLEC request Unbundled Sub-Loop Arrangement ("USLA") subloop elements.

BAMA provides no legitimate reason for requiring the added expense and delay of a TOPIC. Under BAMA's tariff every CLEC intending to provide DSL services to end users served by fiber feeder must construct an individual interconnection facility adjacent to BAMA's FDI. BAMA will not so much as permit CLECs to use BAMA easements, nor will BAMA assist CLECs in any way in complying with its TOPIC requirements. Instead, CLECs must secure their own easements and place separate TOPICs around the FDI. This requirement will only serve to delay the provision of advanced services in the Commonwealth and clutter the landscape with TOPIC structures.

BAMA has also included time consuming and expensive application processes, engineering reviews and inquiries. Before ordering a subloop, CLECs must submit an application for TOPIC interconnection: "The application must include the existing Telephone Company FDI locations where the [CLEC] desires USLA, detail initial requirements and a forecast detailing anticipated growth in demand of the number of sub-loops to be requested at each location."

After the CLEC submits the application, along with the application fee and "any applicable inquiry and review fees," BAMA will conduct a site survey, prepare a work order and cost estimate for completion of the required work. BAMA will not, however, provide the work order and cost estimate until 45 business days after receipt of the application. Only after completion of TOPIC interconnection may CLECs request access to unbundled subloops. While the May 25th Tariff Filing details the application process and intervals for TOPIC, it is conspicuously silent on any provisioning intervals for the subloop itself. The Department should insist that BAMA tariff its subloop provisioning interval.

In sum, before being able to access an unbundled subloop in Massachusetts, which the FCC required ILECs to provide to promote the "rapid development of competition," including the provisioning of advanced services, CLECs must wait 45 business days from application to provisioning, reveal sensitive retail information to the ILEC and wait an unknown interval for provisioning of the subloop itself. This is clearly not what the FCC intended. Nowhere in the UNE Remand Order does the FCC even contemplate that CLECs would need to construct and provide any type of interconnection cabinet to access the subloop. The Department should not allow BAMA to impose these unreasonable restrictions on CLECs in Massachusetts. Rather, the Department should initiate a more formal proceeding, with discovery, to investigate BAMA's subloop offering.

Bell Atlantic's Dark Fiber Offering Is Internally Inconsistent and Should be Clarified

BAMA defines dark fiber to be a "continuous fiber optic strand within an existing, in-place [BAMA] fiber optic cable sheath." However, BAMA does not consider a strand to be "continuous" if "splicing is required to provide fiber continuity between locations." Read together, these sentences indicate that BAMA will not provide dark fiber if splicing is needed. Notwithstanding these statements, BAMA goes on to say that if "a fiber strand can be made continuous by joining fibers at existing splice points within the same sheath, [BAMA] will perform such splicing." These last two provisions are inconsistent. Either BAMA will, or it will not, splice dark fiber pieces for requesting CLECs. Because CLECs should be able to purchase dark fiber that is spliced, Rhythms urges the Department to require BAMA to delete the provision denying CLECs access to dark fiber where splicing is required.

Conclusion

BAMA's subloop offering in its May 25th Tariff Filing is inconsistent with both the letter and the spirit of the FCC's UNE Remand Order. The Department should not permit BAMA to restrict access to this network element when the FCC has ordered that greater access to this element be provided throughout the country. Given the

crossover in issues between this offering and BAMA's collocation at the RT provisions, Rhythms recommends that the Department initiate a thorough investigation of these issues. In addition, Rhythms requests that the Department order BAMA to clarify its dark fiber offering by eliminating the prohibition on the availability of spliced dark fiber.

Respectfully submitted,

RHYTHMS LINKS INC.

By its attorneys,

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